Motion Practice

A. CONCURRENCE

The Court requires strict compliance with Local Rule 7.1(a) regarding concurrence, and the Court will impose costs for failure to comply with the Local Rule.

B. FORMAT AND PAGE LIMITATIONS

All briefs must comply with Local Rules 5.1 and 7.1, and must contain citation to appropriate authorities within the text of the brief, and citations must conform to the latest edition of The Bluebook: A Uniform System of Citation published by the Harvard Law Review.

The Court enforces the page limit set forth by E.D. Mich. LR 7.1(d)(3)and the formatting/type size requirements set forth by E.D. Mich. LR 5.1(a). The Court does not routinely grant requests to file longer briefs. Requests to file an oversized brief must be made by motion, in which the moving party sets forth specific reasons justifying the need for additional pages.

If a brief and its accompanying exhibits exceed twelve pages in total length, the filing must contain a table of contents, a table of authorities, and an index. Briefs and accompanying exhibits that exceed twelve pages must comply with the requirements of length set forth in Local Rule 7.1(d)(3). References in briefs to an argument or statement made by an opposing party must include a specific citation to the docket and page numbers of the matter referenced. Documents must be prepared in 12 point type and double spaced.

Captions of motions, briefs and proposed orders may never contain extraneous matters such as a listing of counsel or other language commonly found in state court filings. Pleadings containing such extraneous matters will not be filed by the deputy clerk.

C. BRIEFING SCHEDULE AND ORAL ARGUMENT - DISPOSITIVE MOTIONS

The Court does not issue a briefing schedule; rather, it follows the time limits set forth in E.D. Mich. LR 7.1(e) and Fed. R. Civ. P. 6.

The Court enforces the response and reply due dates as set forth in Local Rule 7.1(3), even when the motion hearing is set far in advance. Attorneys who do not respond to motions in a timely fashion are not permitted to argue before the Court during oral argument.

The Court will schedule hearings on most dispositive motions made before or during trial. Oral argument is scheduled approximately 10 weeks from the date of filing. The court will occasionally cancel oral argument when, after a review of the briefs, the Court finds that argument would be neither necessary nor helpful. See E.D. Mich. LR 7.1(e)(2).

The parties are encouraged to present a proposed order at the hearing.

D. BRIEFING SCHEDULE AND ORAL ARGUMENT - NON-DISPOSITIVE MOTIONS

As stated previously, Counsel must comply with the time limits set forth in E.D. Mich. LR 7.1(e) and Fed. R. Civ. P. 6.

The Court will generally schedule a hearing on post-trial and non-dispositive motions (including motions for temporary restraining orders), except motions for reconsideration and prisoner *pro se* motions. Most discovery motions, however, are referred to a Magistrate Judge. The Court does not generally refer motions other than discovery motions to a Magistrate Judge, except as required by Court procedure.

The parties are encouraged to present a proposed order at the hearing.

E. SEPARATE MOTION AND BRIEF

E.D. Mich. LR 7.1(c) requires that motions and responses to be accompanied by a separate brief. Motions may not be included within or appended to a response or a reply, and under no circumstances may a motion be included within the text or footnotes of another motion.

F. SUMMARY JUDGMENT

No party may file more than one motion for summary judgment without obtaining leave of court.

Before filing a motion for summary judgment or responding to such motion, the parties are strongly urged to familiarize themselves with Celotex Corp. v. Catrett, 477 U.S. 317 (1986), Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986), and Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574 (1986). An excellent summary of these cases appears in Street v. J.C. Bradford & Co., 886 F.2d 1472 (6th Cir. 1989). See also Schwarzer, Summary Judgment under the Federal Rules: Defining Genuine Issues of Material Fact, 99 F.R.D. 465 (1984).

A Rule 56 motion must begin with a "Statement of Material Facts." Such a Statement is to be included as the first section of the Rule 56 Motion. The Statement must consist of separately numbered paragraphs briefly describing the material facts underlying the motion, sufficient to support judgment. Proffered facts must be supported with citations to the pleadings, interrogatories, admissions, depositions, affidavits, or documentary exhibits. Citations should contain page and line references, as appropriate.[1] The full text of any source cited should be filed with the Court in a Fact Appendix. The Fact Appendix shall contain an index, followed by the tabbed exhibits. Chambers' copies of Fact Appendices of more than 20 pages must be separately bound and include a cover sheet identifying the motion to which they are appended. All pages from the same deposition or document should be at the same tab. The Statement of Material Facts counts against the page limit for the brief. No separate narrative facts section shall be permitted.

The response to a Rule 56 Motion must begin with a "Counter-statement of Material Facts" stating which facts are admitted and which are contested. The paragraph numbering must correspond to moving party's Statement of Material Facts. If any of the moving party's proffered facts are contested, the non-moving party must explain the basis for the factual disagreement, referencing and citing record evidence.[2] Any proffered fact in the movant's Statement of Material Facts that is not specifically contested will, for the purpose of the motion, be deemed admitted. In similar form, the counter-statement may also include additional facts, disputed or undisputed, that require a denial of the motion.

Counsel are discouraged from employing elaborate boilerplate recitations of the summary judgment standard or lengthy string citations in support of well-established legal principles. Instead, counsel should focus their analysis on a few well-chosen cases, preferably recent and from controlling courts. Counsel are encouraged to supply the Court with copies of their main cases, with the relevant passages highlighted and tabbed. Where unpublished opinions or opinions published only in a specialty reporter are cited, copies of these cases must be submitted with the briefs.

G. TEMPORARY RESTRAINING ORDERS AND PRELIMINARY INJUNCTIONS

If necessary, the Court will set a time schedule for motion and briefing requirements relating to requests for temporary restraining orders and preliminary injunctions which is less than prescribed by E.D. Mich. LR 7.1. In addition to the requirements of Fed.R.Civ.P. 65 and E.D. Mich. LR 65.1, the Court requires that all temporary restraining orders, including those considered ex parte, require some notice to the opposing party and an opportunity for the Court to hear both sides unless the

moving party can demonstrate good cause for failing to give notice to the opposing party. Usually, the Court will schedule a conference before hearing any request for TRO or preliminary injunction. Parties are encouraged to notify the case manager by telephone upon filing a motion for an injunction so that appropriate scheduling issues can be discussed. The court strongly encourages parties to confer ahead of any preliminary injunction hearing in an attempt to reach an agreement with respect to the injunction.

H. PRIVACY

Counsel should be vigilant regarding the use of private information in any filings and should redact such information when required. For further information, counsel should refer to the appropriate Federal Rules regarding privacy protection.

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[1] Examples of movant's separate material factual statements:

> 1. Plaintiff Jones worked for ABC Corp. in an at-will position from 1999 until his termination in 2005. *Jones* dep., Ex. 4, p. 10
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> 25. ABC Forp. Human Resources Director Smith testified that the only reason Jones was terminated was repeated tardiness. Smith dep., Ex. 15, p. 5.

[2] For examples of non-movant's corresponding factual statements:

> 1. Plaintiff admits that he worked for ABC Corp. in an at-will position, but the commencement of employment was in 1997. *Jones* dep., Ex. 4, p. 22.
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> 25. Plaintiff admits that Human Resources Director Smith testified at page 5 that Jones was terminated for tardiness, however Smith also agreed that he said in an email to ABC Corp. Vice President Brown that Jones should "move out" since he was "getting along in years." Smith dep., Ex. 15, p. 39.